

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
COMPANY JURISDICTION

+ **CP No. 285 of 2007**

% **20.02.2008**

In the matter of
The Companies Act, 1956:

Scheme of Amalgamation of:

Bluebird Electrotrading Pvt. Ltd.

... **Transferor Company/
Petitioner Company
no.1**

with

HCL Peripherals Ltd.

.... **Transferee Company/
Petitioner Company
no.2**

Through: Mr. Satvinder Singh, Advocate.
Mr. R. D. Kashyap, Dy.Registrar
of Companies.
Mr. Rajiv Behl, Advocate for the
O.L.

VIPIN SANGHI, J. (ORAL)

1. This is a petition under Sections 391-394 of the Companies Act, 1956 seeking sanction of the Scheme of Amalgamation of Bluebird Electrotrading Pvt. Ltd. (transferor company) and HCL Peripherals Ltd.(transferee company).

2. The Transferor company was incorporated on 21.08.1995. The transferee company was incorporated on 06.11.1992.

3. The registered office of both the companies are situated

at 806, Siddharth, 96, Nehru Place , New Delhi – 110019, within the jurisdiction of this Court.

4. The authorized share capital of the Transferor company as on 1st september , 2007 was Rs. 10 lacs divided into one lac equity shares of Rs. 10/- each. The issued, subscribed and paid up equity share capital of the Transferor company was Rs. 1,00,050/- divided into 10,005 equity shares of Rs. 10/- each.

5. The authorized share capital of the Transferee company as on 1st September, 2007 is Rs. 2.5 crores divided into 25lacs equity shares of Rs. 10/- each. The issued, subscribed and paid equity share capital of the Transferee company is Rs.1,98,45,070/- divided into 19,84,507 equity shares of Rs.10/- each.

6. The petitioner companies had filed Company Application (M) No. 143/2007 which was allowed by order dated 24th September 2007. By the aforesaid order, the requirement of conducting statutory meetings of equity shareholders of both transferor and transferee companies was dispensed with. The meeting of un-secured creditors of the transferee company was also dispensed with. Both the petitioner companies do not have any secured creditors.

7. The Transferor company was directed to convene the meeting of its unsecured creditors at 806, Siddharth, 96, Nehru Place ,

New Delhi – 110019 on 17th November 2007 at 11.00 a.m , for the purpose of considering and, if thought fit, approving the said Scheme of Amalgamation.

8. Mr Kewal Krishna Wadera, Advocate and Ms Akansha Verma Chandhok, Advocate were appointed as the Chairperson and the Alternate Chairperson respectively of the said meeting of unsecured creditors of the Transferor company. The required quorum was fixed at 3 unsecured creditors in number and 15% of the total unsecured debt in value. The Chairperson of the said meeting, in his report dated 22nd November 2007, has reported that the meeting was attended by 7 unsecured creditors in person/ through authorised representatives, entitled together to unsecured debt of Rs.9,26,70,804/- constituting 89.13% of the total value of debt, of the Transferor company and that the said Scheme was approved unanimously. The copy of the Chairperson's report has been filed on record.

9. Vide order dated 04.12.2007, citations were directed to be published in “The Statesman” (English edition) and “Dainik Jagran” (Hindi edition), in terms of Companies (Court) Rules, 1959. An affidavit dated 8th February, 2008 has been filed by one Mr. S.S Mishra , the authorized signatory of the petitioner companies about the publication of the citations in “The Statesman” (English) and “Dainik Jagran”

(Hindi) on 25.01.2007. The said publication containing the said citations were also produced along with the affidavit. No objection to the proposed scheme has been received from any member of the public.

10. Notices were issued to the OL and the Regional Director (Northern Region) vide order dated 4th December 2007. Pursuant to the notice issued to the OL, a report dated 15.02.2008 has been filed by the Official Liquidator. The Official Liquidator sought information from the petitioner company vide its letter no. OL/TECH/AMAL/93/48 dated 07.01.2008, upon which the requisite information was furnished by the Petitioner Companies.

11. The OL has considered the report of the Chairperson of the meeting unsecured creditors of the Transferor company, as well as the accounts of Petitioner companies as on 31st March 2007. The OL in its report has stated that he has not received any complaint against the Scheme of Amalgamation from any person/parties interested in the scheme in any manner whatsoever, and on the basis of information submitted by the petitioner companies. Thus it was inferred that the affairs of the petitioner companies do not appear to have been conducted in a manner prejudicial to the interest of the members, creditors, or public and in accordance with the provisions of Section 394(1) of the Companies Act, 1956.

12. The report has also been filed by Shri Dhan Raj, Regional Director (Northern Region) by an affidavit, dated 13th February 2008. One of the objections raised is that in the scheme the petitioner companies have not stated whether they have complied with the Accounting Standard -14 issued by the Institute of Chartered Accountants of India. The petitioners have filed their reply to these objections. In paragraph 4.1 of the reply the petitioners have undertaken to comply with the Accounting Standard-14, that is "Accounting of Amalgamation" issued by the Institute of Chartered Accountants of India. Therefore this objection also does not survive. The other objections raised by the Regional Director is that para 2.15(a) of Part-II of the scheme provides for amendment of Clause-III (A) of the Memorandum of Association of transferee company, that is, petitioner company No.2. The objection is that the Memorandum of Association of company can be amended only after following the procedure prescribed under the relevant provisions under the Companies Act. On this aspect I have heard the arguments of the learned counsel for the petitioners. Para 2.15(a) of the Scheme reads as follows:

"2.15 (a) Clause III(A) of the Memorandum of Association of the Transferee Company shall, upon the Scheme coming into effect and without any further act or deed, stand amended by adding the following main object, after sub-clause 2 of Clause III(A) of the Memorandum of Association of the Transferee Company.

3. To carry on the business of investment, finance, hire, purchase and leasing of all moveables and immoveables.
4. To guarantee the payment or performance of any contracts or obligations or become surety for any person, firm or company for any purpose and to act as agents for the collection, receipt or payment of money and to act as agents for and render services to customers and others and to give guarantee ad indemnities."

13. Counsel for the petitioner companies submits that Sections 391 to 394 of the Companies Act is complete Code by itself. It contemplates a single window procedure. The learned counsel submits that the rigor of the procedure prescribed under Sections 391 to 394 is in fact greater when compare to Sections 17(1) of the Companies Act which requires special resolution to be passed to alter the main objects of the company. Whereas the passing of the special resolution only requires that the resolution should be approved by 75% or more of the shareholders present in voting, Sections 391 to 394 requires the approval of the scheme, inter alia, by at least 75% of the shareholders present and voting and also requires that at least 50% in number of the shareholders voting at the meeting should approve the scheme.

14. He further relies on a decision of this Court in ***Maharishi Ayurveda Corprration Pvft. Ltd. with Maharishi***

Ayurveda Products Ltd. in CP No.288/2005 wherein a similar objection had been raised by the Regional Director, Northern Region to the scheme of amalgamation which, inter alia, provided for amendment of the memorandum of association of the transferee company. This Court relying on two other decisions of this Court and a decision of the Gujarat High Court overruled the similar objection raised by the Regional Director, Northern Region. Following the aforesaid decisions and in view of the aforesaid legal position, this objection of the Regional Director, Northern Region is overruled.

15. The Regional Director, Northern Region has also pointed out that the transferee company intends to carry on the business of a non-banking financial company and has stated that the transferee company should be directed to obtain a certificate of registration if required from the RBI. Learned counsel for the petitioner contends, that this is a post amalgamation aspect which does not concern the Regional Director, Northern Region. Learned counsel for the petitioner, however, submits that in any case, if there is any such requirement in law then the transferee company shall comply with the provisions of law.

16. The official liquidator in his report has pointed out that the present authorised share capital of the transferee company is insufficient to issue shares as per the swap ratio determined under the

scheme. Learned counsel for the petitioner has pointed out that clause 2.14 of the scheme has already addressed this concern. Clause 2.14 (a) & (b) of the Scheme reads as follows:

2.14 (a) Upon Scheme becoming effective the authorised share capital of the Transferee Company shall stand increased to Rs.3,00,00,000 (Rupees Three Crores Only) and the Memorandum and Articles of Association of the Transferee Company shall automatically stand amended accordingly and the words and figures in Clause V of the Memorandum of Association shall be substituted to read as follows:

“The Authorised Share Capital of the company is Rs.3,00,00,000/- (Rupees Three Crores Only) divided into 30,00,000/- (Thirty Lacs Only) Equity Share of Rs.10/- (Rupees Ten) each.

Similarly clause 3 of the Articles of Association of the Transferee Company shall be substituted as under:

“The Authorized Share Capital of the company is Rs.3,00,00,000/- (Rupees Three Crores Only) divided into 30,00,000 (Thirty Lacs Only) Equity Share of Rs.10/- (Rupees Ten) each.”

(b) The Transferee Company shall pay the requisite filing fee and stamp duty on the Authorised Share Capital so increased. Further, the Transferee Company shall also file the amended copy of its Memorandum and Articles of Association with the Registrar of Companies, NCT of Delhi and Haryana within 30 days from the Effective Date and the Registrar of Companies shall take the same on record.”

17. In view of the aforesaid objections raised by the official liquidator does not survive.

18. There is no other legal impediment to sanction of the Scheme of Amalgamation which is annexed to the petition.

Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The Transferee company will comply with the statutory requirements in accordance with law. Certified copies of this order be filed with the Registrar of Companies within five weeks. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other taxes or levies that may be payable in accordance with law. Upon sanction becoming effective from the appointed date of amalgamation, that is 1st April 2007, the Transferor company stands dissolved without being wound up. The O.L. shall be paid expenses amounting to Rs.10,000/- within two weeks, to be deposited in the Common Pool Fund.

19. The petition is disposed of in terms of the above order.

February 20, 2008
aj/P.K. BABBAR

VIPIN SANGHI, J.